

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CHARLES RAY GUIDEN

CIVIL ACTION NO. 08-530-P

VERSUS

JUDGE HICKS

CADDO CORRECTIONAL CENTER,
ET AL.

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is Plaintiff Charles Ray Guiden's (Guiden) Appeal of a ruling by the Magistrate Judge (Doc. No.9). On February 6, 2009, Guiden filed a Motion for Leave for extension of time of 30 days to apply for a writ of mandamus with the Fifth Circuit Court of Appeal (Doc. No. 7). On February 10, 2009, Magistrate Judge Hornsby issued an order denying Guiden's Motion for Leave (Doc. No. 8). Specifically, Magistrate Judge Hornsby found the motion "unnecessary" reasoning that "this court does not set deadlines for an application for a writ to the Fifth Circuit." Magistrate Judge Hornsby advised that Guiden's case was "undergoing further review." Guiden now appeals the denial of the motion.

The Magistrate Judge's ruling is not a recommendation to the district court; rather, it is an order from the magistrate judge on a non-dispositive matter that requires the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also Castillo v. Frank, 70 F.3d 382, 385 (5th Cir. 1995) and Perales v. Casillas, 950 F.2d 1066, 1070 (5th Cir. 1992).

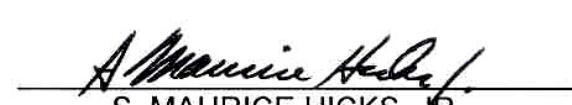
This Court will review the Magistrate Judge's legal conclusions *de novo*, and will review his factual findings for clear error. See Choate v. State Farm Lloyds, No. 03-CV-2111, 2005 WL 1109432, *1 (N.D. Tex. May 5, 2005).

Guiden filed what he styled as an "Application for Writ of Mandamus" which gave his reasons in support of his appeal of the magistrate judge's decision (Doc. No. 9). Guiden argues that Magistrate Judge Hornsby should be removed from this case because he made rulings adverse to Guiden in a prior suit. (See Case No. 5:07-CV-370) Guiden contends that due to these rulings and other factors in the prior case, he cannot be heard fairly by Magistrate Judge Hornsby in this current case. Presumably, and because of those reasons, Guiden seeks review with the Fifth Circuit in the current case. However, as Magistrate Judge Hornsby noted in his ruling, this Court cannot set deadlines for application for a writ to the Fifth Circuit Court of Appeal. This case is still in the process of being reviewed by this court as Magistrate Judge Hornsby also noted. Thus, Magistrate Judge Hornsby's order denying Guiden's Motion for Leave to Appeal for Writ of Mandamus with the Fifth Circuit Court of Appeal (Doc. No. 8) was not clearly erroneous or contrary to law.

Accordingly,

IT IS ORDERED that Plaintiff Charles Ray Guiden's Appeal of Magistrate Judge Hornsby's February 10, 2009 Order (Doc. No. 8) be and is hereby **DENIED**.

THUS DONE AND SIGNED, in Shreveport, Louisiana, on this 22nd day of July, 2008.



S. Maurice Hicks, Jr.
S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE